

Opening Statement of the Honorable Ed Whitfield
Subcommittee on Energy and Power
Hearing on “EPA’s Proposed 111(d) Rule for Existing Power Plants, and H.R. __,
Ratepayer Protection Act”
April 14, 2015

(As Prepared for Delivery)

This morning’s hearing will begin our discussion of the Ratepayer Protection Act, a draft bill that would add several commonsense safeguards to EPA’s proposed 111(d) rule for existing power plants, which is referred to by the agency as the Clean Power Plan. I welcome Acting Assistant Administrator McCabe as well as a diverse group representing those impacted by the proposed rule.

At our hearing on the Clean Power Plan last month, we learned about the legal concerns with this unprecedented attempt to expand EPA’s Clean Air Act authority over the highly complex U.S. electricity sector. We also heard from state officials about the substantial challenges they would face in developing State plans and seeking to bring their electricity systems into compliance with this highly complicated and expensive proposal. As a result of that hearing, I am convinced that this proposed rule is on very shaky legal ground and may end up being remanded or even vacated by the federal courts. And in addition to the legal issues, I am also concerned that implementation of this rule risks serious economic harm that states would be prohibited from addressing. The Ratepayer Protection Act provides solutions to both these legal and implementation problems.

The legal infirmities in this rule have already sparked litigation from states and other parties, and additional lawsuits are sure to follow. However, the proposed rule’s tight deadlines would force many states to initiate costly and potentially irreversible compliance steps before these legal challenges are concluded. For example, in developing State plans, decisions may have to be made to shut down coal-fired power plants, begin the process for constructing new energy facilities and transmission, change how electricity is dispatched within their state and establish expensive new energy efficiency programs, all before we know whether this regulation is legal.

The Ratepayer Protection Act ensures that federal environmental regulators do not get ahead of the law and impose burdens on states that may later prove to be outside their legal authority. It does this simply by suspending EPA’s highly accelerated compliance requirements until judicial review is completed.

Aside from the legal issues, the proposed rule also raises serious implementation concerns. In prior hearings relating to EPA’s 111(d) rule, numerous state officials have raised concerns about the costly compliance challenges for their electricity systems. A NERA study estimates electric rate increases averaging 12 percent or more nationwide, and considerably higher in some states. Indeed, the Chairman of the Florida Public Service Commission testified that electric rate hikes could reach 25 to 50 percent in his state.

Ratepayers ranging from homeowners to small business owners to major manufacturers will be impacted by the Clean Power Plan. Higher electric bills pose a burden on consumers, and disproportionately so for low income households and those on fixed incomes. And every additional dollar a business has to spend on electricity is money that can’t be spent for new hiring. In some cases, higher electricity costs could spell the difference between staying in business and having to shut down, especially in a globally competitive economy where countries like China can still rely heavily on coal to power their factories affordably.

At today’s hearing, we will get a better sense of the Clean Power Plan from the perspectives of those who will have to pay for it. As we hear these concerns, we need to be mindful that, despite EPA’s insistence that its proposed rule gives states considerable flexibility, in reality there is little recourse should compliance prove costlier than anticipated by the agency. The Ratepayer Protection Act ensures that if the governor of State finds that a specific State or federal plan will cause significant adverse effects on

ratepayers, the State will not have to comply. It also has a similar provision if a governor finds a significant adverse impact on electric reliability. In making these determinations, governors are required to consult the state energy, environmental, health, economic development, and electric reliability officials.

Keep in mind this bill does not repeal the Clean Power Plan, nor does it in any way stop states that choose to go along with EPA's regulatory agenda from doing so. It simply protects ratepayers from measures that may prove to be illegal or excessively expensive, and restores a measure of state control over electricity decision making.

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